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BEFORE THE
UNITED STATES TRADE REPRESENTATIVE

STEEL

MEMORANDUM FOR THE TRADE POLICY STAFF COMMITTEE ON BEHALF OF EUROFER FOR TIN MILL PRODUCTS

January 15, 2002

This submission on tin mill products is filed on behalf of EUROFER in response to the comments of other parties filed in this proceeding on January 4, 2002 with the Trade Policy Staff Committee (TPSC) and matters raised in the meeting with the TPSC on January 7, 2002.

As the TPSC is aware, three of four Commissioners examining tin mill steel as a distinct like product concluded that, while the industry is seriously injured, imports are not the cause of that serious injury.[1] We believe the burden is now on the domestic producers to make the case for including tin mill in the President's remedy despite the Commission's vote. They have not done so.

We therefore offer these brief comments:

1. The domestic industry has offered no arguments to refute the finding of the majority of the Commission that tin mill steel is a distinct industry: Four of the six Commissioners found that "there is a clear dividing line between tin mill products and certain carbon flat-rolled steel and GOES" and that tin mill should be defined as a separate like product.[2] The majority of the Commission reached this conclusion after identifying distinctions between tin mill and other flat-rolled steel in terms of physical properties, manufacturing processes, production facilities, distribution channels, and end-users.[3] The submissions of the domestic industry offer no suggestion whatsoever that the majority of the Commission has erred in this conclusion.

2. The domestic industry's own responses to exclusion requests for tin mill bolster the conclusion that a substantial portion of tin mill imports is not available from domestic producers: The submissions of the domestic industry on exclusion requests are striking for their lack of documentation of U.S. production of numerous specialty tin mill products. For many products of importance to European producers, such as ultra-wide width tin mill exceeding 40 inches, the domestic industry has indicated that it does not object to exclusions, "provided that no U.S. producers are identified."[4] The domestic submissions, though, identify no U.S. producers for these products. As a whole, the domestic comments support the conclusion of Commissioners Koplan, Okun, and Hillman, who found that a "substantial portion" of tin mill imports is unavailable domestically.[5] Thus, the domestics' own comments illustrate why import restrictions on tin mill products would be inappropriate.

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1 *Steel,* Inv. No. TA-201-73, USITC Pub. No. 3479 (Dec. 2001) at 81.

2 *Id.* at 51.

3 *Id.* at 49-51.

4 See Response to Request to Exclude Products From Import Relief, filed before the TPSC by the Minimill 201 Coalition et al, Dec. 7, 2001; Domestic Industry Response to Exclusion Requests Filed on Behalf of Bethlehem Steel et al, Dec. 5, 2001; and Domestic Producers' Supplemental Appendix Responding to Product Exclusion Requests Filed on Behalf of Bethlehem Steel, et al, Dec. 20, 2001.

5 *Steel* at 80-81.

3. The domestic producers have done nothing to refute the overwhelming evidence that the dramatic, long-term decline for tin mill products is the underlying reason for the industry's poor financial performance: Respondents have shown that even had imports held constant at 1996 levels as a percentage of domestic consumption (at a level the domestic industry characterized as non-injurious in the antidumping proceedings against Japan), the domestic industry would have suffered from low capacity utilization rates.[6] While demand for tin mill products has been in a steep and long-term decline, the industry has, until very recently, retained capacity to service a level of domestic consumption that is long gone. The domestic industry has offered no analysis to the TPSC to explain how imports – which are now in retreat – are somehow a more important cause of serious injury than the declining demand/capacity overhang problem. The lack of an explanation is especially significant in light of the fact that four Commissioners found that the industry was significantly impaired before the beginning of the period of review in this investigation.[7]

4. The domestic industry has been unable to show that non-NAFTA imports are injurious: Given the Commission's exclusion of Canada and Mexico as sources of injury, WTO principles require an explicit showing that non-NAFTA imports are causing or threatening serious injury.[8] We believe that Commissioner Miller's explanation of her affirmative vote on tin mill, which included Canada, fails to justify her assertion that imports are injurious even if Canada is excluded. The record shows that total non-NAFTA imports are non-injurious:

a. The domestic industry has offered no credible evidence of any import surge other than the 1999 surge of Japanese imports, which has been completely eliminated by an antidumping order: As a result of the antidumping order imposed on Japan in 2000, current imports from Japan consist solely of products excluded by petitioners themselves from the antidumping investigation. The submission of the Minimill 201 Coalition claims that there has been a "surge" of imports from Brazil, Korea, Taiwan, and China.[9] Several points are in order here. First, while imports from these countries have grown in recent years, they are growing from an extremely small base, and they still constitute

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6 *See* Joint Respondents' Tin Mill Pre-Hearing Injury Brief at 24-27; *see also* Comments of Silgan Containers submitted to the TPSC on January 4, 2002 at 11-13.

7 *Steel* at 77.

8 *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, Report of the Appellate Body, WTD/DS166/AB/R, July 31, 2001, ¶ 98. See also *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, Report of the Panel, WT/DS202/R, October 29, 2001, ¶ 7.162.

9 Comments submitted to the TPSC on January 4, 2002 by the Minimill 201 Coalition et al, at 16.

collectively only 20 percent of imports.[10] Second, the sharp drop in total imports (a 23.4 percent drop in 2000 and another 8.1 percent drop in 2001)[11] has more than offset any growth from these countries. As the TPSC is well aware, U.S. and WTO obligations require an increase in *total* imports as a predicate for safeguard relief.[12] Third, even if these imports were having adverse price effects in the U.S. market (and we do not believe they are), Sec. 201 is an inappropriate remedy; the proper solution would be Title VII cases aimed at injurious imports.

b. <u>The domestic industry has been unable to show that tin mill import prices are causing price suppression in the U.S. market. Indeed, tin mill prices are increasing:</u> The record shows that the average price of non-NAFTA imports for tin mill was higher than the average price of domestic tin mill in 19 of 22 quarterly comparisons over the period of investigation.[13] While the domestic industry may be able to point to a few smaller, lower-cost suppliers, the fact remains that most imports are Canadian or European products which oversell U.S. products.[14] And, as the domestic industry admits, U.S. tin mill prices have risen in recent months.[15] With low-priced Japanese imports out of the market, there is no case to be made for a causal link between total imports and serious injury, by either volume or price effects.

c. <u>The comments of the domestic industry further confirm that European imports are not injurious to the U.S. industry:</u> As we noted in our January 4 submission to the TPSC, the domestic tin mill industry is on record as characterizing European imports as non-injurious. Again in its January 4 submission to the TPSC. the Minimill Coalition singles out Brazil, Korea, Taiwan, and China as sources of low-priced tin mill. European imports, on the other hand, are similarly situated to Canadian imports, which have been

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10 U.S. ITC Dataweb.

11 *Steel*, Staff Report to the Commission at FLAT-17.

12 *See* Sec. 201(a) and Sec. 202(c)(1)(C); WTO Agreement on Safeguards, Article 2.1.

13 *Steel*, Staff Report to the Commission at FLAT-97.

14 U.S. ITC Dataweb.

15 See Comments submitted by the Minimill 201 Coalition et al to the TPSC on January 4, 2002 at 17 ("U.S. Steel led in rising [sic] base prices by 3.5 percent for tin mill products effective January 2, 2002 (informing customers on November 9). Weirton Steel Corp. and Wheeling-Pittsburgh Steel followed shortly and Bethlehem announced similar increases on November 20.") Counsel for the Minimill 201 Coalition tries to explain away the increase by characterizing it a move made possible by the "prospect" of import relief. *Id.* It is important for the TPSC to note, though, that these price increases were announced before the ITC issued its recommendations on remedy.

deemed non-injurious by the Commission. All-encompassing 201 restrictions would be a crude and improper way to reach the negligible amount of non-European imports that seem to be the worry of the domestic industry.

7. The domestic industry has not explained why the recent industry restructuring is not in itself a remedy for the industry's problems: The domestic industry has taken important steps over the last year to bring capacity in line with reduced demand.[16] As the Commission has noted, these changes are too recent to be captured in Commission data in the Sec. 201 investigation.[17] We believe the burden should be on the domestic industry to show that the industry has further plans for adjusting that can be accomplished only through import restrictions.

8. The U.S. can makers have presented a compelling case that their competitiveness will be harmed by import restrictions on tin mill: The domestic industry would have the TPSC believe that the economic impact of high tariffs on consumers will be minimal, as "the cost of steel is but one component of the price of the value added product."[18] For tin mill products, the prospect of a minimal impact on customers is an impossibility. Tin mill products account for approximately 60 to 75 percent of steel can manufacturers' marginal production costs.[19] Price increases of only 2% cause consumers to switch to other packaging,[20] and as three Commissioners have noted, changes to other forms of packaging tend to be permanent.[21] The domestic industry has not explained how increasing the costs of the U.S. can makers would not run contrary to the mandate of the Sec. 201 statute that import relief should "provide greater economic and social benefits than costs."[22]

In conclusion, the domestic industry has not responded at all to the finding of four Commissioners that tin mill is a separate industry. It has not responded to the finding of three Commissioners that long-term decline in demand and chronic overcapacity – not imports – are the root causes of the industry's poor financial condition. It has not responded to the finding by three Commissioners that a significant portion of tin mill imports consists of products unavailable from domestic producers. And the domestic industry has not provided any reason why import restraints are warranted when the record indicates otherwise: The one surge in the

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16 *Steel* at 79.

17 *Id.* at n 413.

18 Comments submitted to the TPSC on January 4, 2002 by Bethlehem Steel, et al at 26.

19 Remedy Hearing Transcript at 296 (testimony of Mr. Thomas Scrimo).

20 *Id.* at 297.

21 *Steel* at 78-79.

22 Sec. 203(a)(1)(A).

period of investigation has been remedied by a Title VII order. Total world imports have also dropped sharply since 1999. The vast bulk of remaining imports consist of Canadian and European imports which oversell U.S. products and which U.S. producers have characterized as non-injurious. The domestic industry has recently undergone a restructuring to bring capacity in line with reduced demand. No one has made a compelling case that import restrictions are warranted under these circumstances.

One further note: During the TPSC meetings with interested parties, the TPSC requested that we identify any information brought to the attention of the TPSC which was not in the record before the International Trade Commission. The information on recent tin mill price increases, cited above, is the only reference that EUROFER has made to facts which were not on the record before the ITC.

We appreciate this opportunity to bring our views to the attention of the TPSC. If you have any questions, please do not hesitate to contact us.

Respectfully submitted,

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